Reforming ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA

A LEGISLATION DISCUSSION PAPER

MINISTRY OF ENVIRONMENT, LANDS AND PARKS
MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES
PROVINCE OF BRITISH COLUMBIA

Reforming ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA

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PREFACE

For the past two years, the Ministry of Environment, Lands and Parks has been reviewing British Columbia's environmental protection legislation. This review has shown that the province must strengthen its environmental legislation if it is to meet the challenges of the coming years.

The Ministry of Environment, Lands and Parks will be proposing legislation over the next several years to support a number of critical activities, including wildlife, fish and endangered species protection; pollution prevention; water management; and environmental assessment. *Reforming Environmental Assessment in British Columbia* is one of a series of discussion papers to be released by the Minister of Environment, Lands and Parks as part of this legislative renewal process.

This discussion paper begins a public consultation process that will help the ministry develop a new British Columbia Environmental Assessment Act. It is being circulated to the public and stakeholder groups to obtain feedback on its proposals. The new environmental assessment legislation will affect a broad range of public and private activities and the province is committed to consultation and discussion. All suggestions and comments will be considered in the development of the legislation and the programs needed to support it.

Several provincial government ministries provided valuable assistance during the preparation of this paper. In particular, the ministry acknowledges the contributions of the Ministry of Energy, Mines and Petroleum Resources, the Ministry of Economic Development, Small Business and Trade, and the Ministry of Aboriginal Affairs. The Ministry of Environment, Lands and Parks, however, accepts final responsibility for the content of the discussion paper.

Because of its extensive existing project review responsibilities, the Ministry of Energy, Mines and Petroleum Resources is co-sponsoring this discussion paper. In cooperation with the Ministry of Environment, Lands and Parks, it has implemented various improvements to its project review procedures in recent years. For example, the proclamation of *The Mine Development Assessment Act* in 1991 reflects many of the measures discussed in this paper.

Executive Summary

Purpose of the Discussion Paper

The purpose of this discussion paper is to review the current approach to environmental assessment in British Columbia, to establish principles to guide the preparation of environmental assessment legislation, and to identify the major issues that must be addressed in development of a fair and effective environmental assessment process. Although it is recognized that improved environmental assessment of all activities is required, the focus at this time is on projects with substantial impact potential.

The Need for Change

Environmental assessments ensure that decisions on major development proposals are made with full knowledge of the potential environmental costs and implications. Environmental impact assessments of site-specific developments are currently addressed through three formal review processes: the Energy Project Review Process; the Mine Development Assessment Process and the Major Project Review Process. These processes also examine a broad range of other issues of interest to the government, and final decisions reflect a full evaluation of all issues.

Existing project reviews have demonstrated many strengths. They provide a "one window" government contact point for each sector. They accommodate comprehensive approaches to project reviews, the use of inter-ministry committees, and ongoing consultation with other levels of government.

However, deficiencies appear in administration, definitions, public consultation requirements, and the scope of review between the processes. The Major Project Review Process needs to be supported by legislation. Compatibility with the proposed Canadian Environmental Assessment Act is also necessary.

In addition, environmental assessments in British Columbia must respond to several challenges. They include promoting sustainability; broadening the context

of environmental assessment; complementing land use planning; reducing confrontation associated with high profile projects by building consensus-based approaches and public involvement into an open, accountable system; reviewing proposals in a consistent, efficient and timely manner; integrating federal and local government participation; and integrating aboriginal participation.

Fundamental change in British Columbia's approach to environmental assessment is essential to correct the deficiencies in the current system and meet the stated challenges. The first step is to amalgamate the three existing project review processes into a single legislated environmental assessment process.

Principles of a Fair, Effective and Efficient Environmental Assessment Process

To ensure that decisions are reached in a fair, effective and efficient manner, the following principles will guide the development and administration of the environmental assessment process:

- clear accountability for decisions throughout the process;
- balanced consideration of a project's ecological, economic and social implications and public concerns in decisions on project acceptability;
- ready public access to the process, including meaningful opportunities for public involvement and conflict resolution;
- provision for independent and impartial review of projects;
- consistent application of review requirements to projects with similar impact potential; and
- rigorous, timely and flexible environmental assessment procedures.

Recommendations

To ensure that potential environmental impacts of proposed projects are reviewed through a single legislated environmental assessment process, the following key recommendations are proposed to guide the development and management of a comprehensive environmental assessment act.

Application of the Environmental Assessment Process

- A combination of category and threshold inclusion criteria should be used to determine those projects subject to the environmental assessment process.
- The environmental assessment process should apply to both public and private sector projects that fall within the inclusion criteria set in the legislation.
- All project categories currently reviewed under one of the three project review processes should be included in the proposed act.
- Legislation should provide for a staged review process. Time frames should be set out in the regulation to ensure timely progress through the review process.

Scope of the Environmental Assessment

- Consistent with current practices, the legislation should state that it is the proponent's responsibility to identify and manage all direct environmental impacts associated with the project.
- Indirect and cumulative regional impacts should be included in the environmental assessment process where they are considered significant by the management committee or the minister(s).

Administration of the Environmental Assessment Process

- Responsibility for administration of the environmental assessment process will be assigned to one or more provincial ministers. Advice is sought on which minister(s) should be involved.
- An inter-ministry management committee should guide the overall review process and develop recommendations for the minister(s). A project review committee should be formed at the outset of each individual project review.
- Government should develop a formula to enable cost-recovery for project reviews. The formula should reflect the scope of the environmental assessment process.

Decision-Making Responsibility

- Approval should take the form of a project approval certificate.
- The minister(s), with the support of Cabinet, should issue an approval certificate for all projects and should determine when independent public review is required. Administrative decisions should be made with the advice of an inter-ministry management committee.
- A decision by Cabinet to issue a project approval certificate should be final. If an independent public review is conducted, regulatory permits and licences issued in compliance with the project approval certificate should not be subject to appeal. Administrative decisions made by government officials should be subject to appeal to the minister(s).

Partnerships

- The environmental assessment process should enable the province to work cooperatively with the federal government, neighbouring jurisdictions (provinces, states and territories), local governments, including regional and municipal governments, and First Nations.
- The legislation should enable the province to enter into inter-jurisdictional agreements for cooperative or joint technical and/or public hearings with the federal government.
- Potential impacts on aboriginal sustenance and cultural activities and socio-economic implications for aboriginal communities should be included in all environmental assessments.
- First Nations should be given an opportunity to participate as members of project review committees.
- The legislation should enable the provincial review process to be coordinated with any aboriginal environmental assessment processes that may be developed as treaties and self government initiatives evolve.
- The proposed legislation should enable local governments to participate on project committees. The legislation should also permit local governments to assume responsibility for environmental assessment of projects within their jurisdiction.

Public Involvement

- Legislation should outline procedures for public notification, the release of documents, and public consultation throughout the review process.
- A permanent environmental assessment board should be established to hold independent public reviews of projects. An informal public hearing process is preferred. The board would make recommendations to the minister(s).
- Consensus-based approaches to dispute resolution mechanisms should be formally included in the legislation.
- Assistance in the form of access to technical expertise should be provided to participants as part of the environmental assessment process.

1
INTRODUCTION

1.1 Purpose of the Paper

Environmental assessment processes are widely used to integrate ecological, social and economic factors into project developments and reviews. They have a vital role to play in anticipating and preventing the degradation of environmental quality and in encouraging sound economic development. Environmental assessments are one of several tools used by government to ensure that development decisions are made with full knowledge of potential environmental costs and implications.

In British Columbia and elsewhere, environmental assessment procedures and methodology and impact management strategies have evolved in the context of site- and project-specific planning and development. They are best suited to project-related issues and impacts.

Environmental assessments of development projects in British Columbia are currently addressed through three formal review processes: the Energy Project Review Process; the Mine Development Assessment Process; and the Major Project Review Process (See Appendix). Each focuses on a particular type of project.

In addition to environmental impacts, these processes examine a broad range of issues, and final decisions reflect a comprehensive evaluation of all issues. This has led to a situation where the terms "environmental assessment" and "project review" are often used interchangeably.

It is the government's intention to provide a comprehensive and fair process to determine the acceptability of projects and to facilitate public involvement in project reviews. The first step is to amalgamate the three existing project review processes into a single legislated environmental assessment process.

For the purpose of this paper, "environmental assessment" is defined as a formal process that systematically evaluates the potential environmental impact of a

project and identifies acceptable measures to prevent or minimize any adverse effects. In this context, "environment" encompasses the biophysical, socio-economic, cultural, human health, safety factors and other related aspects of human activity.

At this time, the focus is on the environmental assessment of projects with substantial impact potential. However, it is also recognized that improved assessment of less significant activities, currently handled by inter-agency referrals, is also required. At a minimum, the environmental assessment process will apply to those projects which are subject to existing review processes, and to other projects of similar impact potential.

This discussion paper examines the current approach to environmental assessment in British Columbia. A number of emerging challenges, such as promoting sustainability, greater public involvement and partnerships with other jurisdictions, are identified as essential in an effective and fair environmental assessment process. To address these challenges, environmental assessment legislation must provide authority and direction in the following areas:

- Application of the environmental assessment process
- Scope of the environmental assessment
- Administration of the environmental assessment process
- Decision-making responsibility
- Partnerships with other jurisdictions
- Public involvement and consensus-based consultation

This paper provides background on each of these areas and presents the Ministry of Environment, Lands and Parks' recommendations on how they should be incorporated into a single legislated environmental assessment process.

1.2 Background

The province recognizes the need to integrate environmental considerations into decision-making processes. This goal is being pursued in a number of complemen-

tary areas, including policy and program development and project review and approval.

The environmental implications of policies and programs are formally considered by government agencies, Cabinet committees and Cabinet. Environmental impacts are considered as part of the Cabinet and Treasury Board decision-making processes. The Cabinet Committee on Sustainable Development identifies and accounts for the environmental implications of policy decisions.

The provincial government recognizes that it must continue to find ways to consider environmental implications and to foster awareness of the value placed on environmental quality. Working groups and commissions have been established to publicly review contentious policy issues, such as old growth forests, provincial forest management, and more recently, land use allocation and planning.

A provincial land use management system is required to protect environmental quality and to minimize land use conflicts. The province is committed to improving and integrating three related processes: land use planning, integrated resource management, and environmental assessment.

Designing a systematic land use planning mechanism for B.C. will be one of the most important functions of the recently-created Commission on Resources and Environment (CORE). Provincial government resource management agencies are providing better means to inventory all resource values and develop integrated information systems.

Environmental concerns are also integrated into review and approval processes for a broad range of development proposals, from applications for routine water licences or waste discharge permits to large projects, such as mines and hydroelectric developments.

Government agencies require resource users to apply for a variety of permits, licences and approvals to control activities that may affect the environment. This system regulates developments ranging from the installation of small culverts to property subdivisions and waste discharges. Agency comments are usually requested through a "referral" process. Many thousands of land use and resource activity proposals are reviewed through referrals every year.

In addition, resource planning processes identify and manage the environmental impacts of developments that extend over large areas, such as a forestry operation in an area-wide tenure. Tree farm licences are an example of area-based tenures for which forest management and working plans are required. As well, operational planning processes apply to activities such as the siting of marine salmon farms and the management of activities in a number of major estuaries.

Finally, formal review processes are used to assess the environmental impacts of major developments. In this context, environmental assessments are in fact comprehensive project reviews. Where appropriate, they consider technical, operating, financial, marketing and policy issues associated with the project. This integrated approach produces a comprehensive evaluation of a project on which the government can judge its acceptability. Strengthening the approach to assessing the environmental impacts of these types of projects is the subject of this discussion paper.

2
Environmental Assessment in British Columbia

2.1 Project Review Processes

For the past 16 years, environmental assessments of development proposals have been part of the decision-making process in British Columbia. In the 1970s, guidelines for coal and metal mine developments pioneered the integration of biophysical, economic and social concerns on a project-specific basis. These guidelines have been modified and have led to three formal project review processes: the Energy Project Review Process; the Mine Development Assessment Process; and the Major Project Review Process (see Appendix). Collectively, these processes provide the basis for a single provincial environmental assessment process.

The three project review processes have provided a framework for evaluating the overall acceptability of proposed developments. Provincial approval, in the form of a certificate or approval-in-principle at the end of project reviews, has generally signalled that all policy issues have been resolved, and that technical issues have been examined and are believed to be manageable by available technologies.

Project proponents prefer a certificate prior to final regulatory approvals. While they still are required to obtain statutory licences and permits, a certificate or approval-in-principle enables them to proceed with confidence to finalize project engineering, arrange financing and negotiate contracts. During project reviews, stakeholders* expect to be able to raise policy and technical issues; and they express frustration when the review is perceived to be too restrictive. Thus, in addition to project-related environmental impacts, a variety of issues — ranging from compatibility with land use plans to energy policies and social service delivery — may need to be addressed.

** The term stakeholder is commonly used when discussing public participation to refer to anyone who has a stake in a government policy or action. This generally includes all who perceive that they have an interest. While stakeholder usually refers only to non-government groups and citizens, it can also refer to other government agencies which may be affected. The term is used in this broader sense in this paper.*

The province is strengthening its policy development and review processes so that project-specific environmental assessment is not the only opportunity for considering these issues.

2.2 Strengths of the Current System

Strengths of the current system include the following.

- The provision of a "one window" contact point for each sector within the government system, which has promoted efficiency and timeliness. Lead agencies have an in-depth appreciation of the operating, financial and marketing constraints in their sectors.

- The use of inter-ministry committees has enabled a variety of perspectives and concerns to be considered before decisions are made. Decisions are jointly reached by the Minister of Environment, Lands and Parks and the minister of the lead agency.

- Frequent discussions between provincial and federal agencies and with other jurisdictions is a common feature of project review in B.C. Consultation with interested federal agencies occurs early in the review of a project and federal representatives sit on the Energy Project Review Process and Major Project Review Process review committees. There have also been a number of federal/provincial environmental review panel hearings.

2.3 Weaknesses of the Current System

Weaknesses of the current system include the following.

- There are inconsistencies in the administration of existing review processes, particularly in areas such as time-frames for review, definitions, scope, and content of project assessment and approvals. There are also differences in procedures for public notification, consultation, independent reviews and appeals. These differences lead to instances where there is confusion and uncertainty for the public and industry. As well, they have contributed to increased costs and expanded time-frames for environmental assessment.

- The Major Project Review Process is not legislated.
- Division of administrative responsibility among three processes complicates efforts to harmonize B.C.'s environmental assessment requirements with those of the federal government.
- There is concern about potential bias in the administration of the review processes. Currently, proponents submit an assessment of environmental impacts to the ministry responsible for promoting and regulating their industry. While the lead ministry co-manages the process with the Ministry of Environment, Lands and Parks and involves other parties in the process, there is an underlying perception of bias and conflict of interest.

3
THE BASIS FOR CHANGE

3.1 The Challenges

Several challenges must be met in developing a single legislated environmental assessment process.

Promoting Sustainability

The British Columbia Round Table on the Environment and the Economy has proposed several principles to promote sustainability and guide development of provincial policy. The Round Table emphasizes a system of decision-making and governance that is more proactive, participatory and long-term.

Environmental assessment plays an important role in applying a number of the Round Table's principles. In particular, effective environmental assessment is necessary to preserve and protect the environment, to promote sustainable economic development, and to progress toward the fair distribution of the benefits and costs of resource use and environmental protection.

Broadening the Context of Environmental Assessment

During the 1980s, the scope of environmental assessments expanded beyond short-term impacts on air, water, fish and wildlife in the immediate project area. Broadened assessments also addressed the impacts of both on-site activity and off-site infrastructure throughout the life cycle of the project.

There is growing interest in indirect and cumulative impacts, project justification and the value of non-consumptive uses such as wilderness conservation. Environmental assessment must also tackle complex tasks such as relating potential impacts to public health and the health of the ecosystem, maintaining biodiversity, ensuring sustainability, and addressing transboundary and global issues. There is consider-

able uncertainty about the roles of government and proponents in considering these issues and about the adequacy of current approaches to impact prediction and evaluation.

Complementing Land Use Planning

Environmental assessment and land use planning are complementary activities which, when effectively integrated with tenure systems and operations management, form a solid foundation for sustainable development. Experience elsewhere shows that review mechanisms function better within the framework of a comprehensive land use plan. A plan provides the context to determine both the significance of potential impacts and the appropriate level of impact management.

In the past, planning deficiencies have been unfairly attributed to project review processes. Project-specific reviews often provide the only opportunity for the public to raise basic land allocation or planning issues. Project reviews have sometimes become a forum for debating key land use concerns, for example whether a specific area should be open to resource extraction or conserved for park purposes. Review processes tend to stall when technical issues are complicated by land use policy questions.

The province recognizes that planning must be less sector-driven. Responsibility for designing a comprehensive land use strategy has been assigned to the Commission on Resources and Environment. To complement this initiative, the environmental assessment process must ensure that projects are compatible with emerging regional land use plans as well as site-specific management objectives.

The province is entering into public dialogue on a range of public policy issues, such as forest practices, energy and other environmental legislation. These will provide appropriate forums to debate strategic issues.

Involving All Stakeholders in an Open, Accountable Way

Accountability has emerged as a key environmental issue. A more open and accountable process is required to restore public trust in the ability of government and industry to meet their environmental assessment responsibilities.

While environmental interest groups are lobbying for a rigorous environmental assessment process, industries and communities are worried about the uncertainty, delay and cost. These concerns must be addressed through a credible, open and efficient environmental assessment process.

Reviewing Proposals in a Consistent and Efficient Manner

One challenge will be to involve more participants in environmental assessments, while maintaining efficiency and timeliness.

Government will have to provide sufficient numbers of well-trained staff to ensure the quality and timeliness of government reviews. Adequate explanations of government policies, procedures and requirements must be provided to all participants. Effective coordination is necessary to reduce inter-agency duplication and improve efficiency.

Review deadlines in the proposed Act would encourage procedural timeliness. However, it may be difficult to guarantee time frames without compromising the thoroughness of the review. The ability to meet this challenge will affect the business community's judgement of the investment climate in B.C.

Integrating Federal and Local Government and First Nations Participation

Many agencies from all levels of government participate in environmental assessment in British Columbia. Their roles and responsibilities often overlap, creating uncertainty about responsibility for decisions.

- ***Integration with the Federal Government*** — Judicial interpretation of the federal government's Environmental Assessment Review Process Guidelines has caused them to be applied to a wider range of projects and in a more rigid manner than originally intended. There is uncertainty about the federal government's environmental assessment responsibilities, particularly as they relate to activities under provincial jurisdiction (such as energy developments and mining). As a result, decision-making has been complicated and decisions delayed by overlapping requirements and, in some cases, lengthy court challenges. Through the Canadian Council of Ministers of the

Environment, all Canadian jurisdictions are working to reduce duplication and harmonize environmental assessment legislation and procedures.

Recent court decisions have affirmed that both levels of government play an important role in environmental assessment. Accordingly, federal/provincial cooperation must be assured throughout the process to eliminate procedural and regulatory duplication.

The federal government's environmental assessment activities will become clearer once the proposed *Canadian Environmental Assessment Act* is passed by Parliament. The proposed provincial legislation will clarify the provincial role in environmental assessment and establish a process to coordinate assessments with the federal government and other jurisdictions.

- ***Integration with Local Government*** — Major developments may result in significant environmental, economic and social impacts that directly affect local government. A new environmental assessment process should reaffirm and formalize local government involvement in the review of major developments. It should also complement local governments' efforts to protect the environment and sustain local economies.

  In addition, the environmental impacts of major subdivisions, roads and other community-based activities must be carefully assessed. The roles and responsibilities of provincial and local government in the environmental assessment of such projects should be clearly identified.

- ***Integration with First Nations*** — Aboriginal rights and interests are a significant factor in resource allocation and management decisions in British Columbia, and will grow in importance in the years ahead.

  The province recognizes the need to incorporate aboriginal interests, such as sustenance and cultural activities, with other land use interests. Consultations are underway with First Nations and aboriginal organizations to ensure their early involvement in the environmental assessment process. As well, the province is working with First Nations to identify development and job creation opportunities.

  The province is also committed to advancing aboriginal self government and treaty negotiations. A new environmental assessment process should accommodate coordination with aboriginal environmental assessment processes that may develop as treaties and self government initiatives evolve.

3.2 Guiding Principles

A number of principles must be reflected in an environmental assessment process to ensure that decisions are reached in a fair, effective and efficient manner, and to recognize the legitimate interests and concerns of all stakeholders. The following principles draw on recent work of the Canadian Council of Ministers of the Environment and on the provincial approach to land use planning.

- **Accountable** — Responsibility for decisions, and the process and criteria that influence them, should be explicitly stated.
- **Integrated** — Decisions should be based on the integrated assessment of environmental, economic and social implications.
- **Balanced** — Decisions should be based on a balance of potential environmental, social and economic impacts and public concerns regarding these impacts.
- **Accessible** — The public must have ready access to the environmental assessment process. Clear and understandable information must be available to the public, and meaningful opportunities for public involvement must be provided.
- **Consistent** — The rules guiding the process must be explicit so that all participants, including the proponent, know what the process will entail. The process must be applied consistently so that projects with similar impacts are treated equally.
- **Equitable** — There must be provision for independent and impartial public review of projects. Decisions should maximize benefits and minimize adverse impacts on the environment and affected parties.
- **Flexible** — The process must be flexible so that assessment requirements can be tailored to specific proposals. The process must also be capable of adapting to changing social values, public policies and technical requirements.

Elements of these principles are found in all of the existing project review processes in British Columbia; the challenge is to apply them in a more consistent manner.

4
MAKING CHOICES — THE MAJOR ISSUES

In developing a single legislated environmental assessment process, a number of choices must be carefully made. These include determining which projects will be covered, who will be responsible for managing the process, and how and when the public will be involved.

This chapter outlines ways to address these questions and identifies key factors that should be considered. The discussion is based on the challenges and principles outlined in the previous chapter.

Receiving a range of views on various approaches to the environmental assessment process is an essential step in development of the legislation. To assist in this discussion, each section concludes with the Ministry of Environment, Lands and Parks' policy recommendations on how the main elements of the environmental assessment process could be incorporated into the legislation.

The Ministry of Environment, Lands and Parks is interested in receiving your comments on the following recommendations. A response form, "We Want to Hear from You," has been included at the back of this discussion paper.

4.1 Application of the Environmental Assessment Process

The environmental assessment process must strike the right balance between fairness, rigour and efficiency when determining what projects are subject to its terms.

Project Classification

The government is considering three approaches to determining what projects should be subject to the environmental assessment process.

- **Total Inclusion** — All project proposals would be submitted for screening and either exempted or subjected to further review. This would minimize the chance that a small but high-impact project could slip through. On the other hand, many thousands of projects would have to be screened every year, from small culvert installations to gas wells. Screening these proposals would place enormous burden on government resources.

- **Category Inclusion** — Only specific types of projects would be subject to review under the environmental assessment process. For example, some 25 types of industrial projects are automatically subject to the Major Project Review Process. These categories were based on experience with the industry and the range of potential impacts. The approach recognizes that not all categories of projects require comprehensive environmental assessment. However, an excluded project with potentially high impacts may not be assessed. For this reason, there is a clause in the Major Project Review Process Guidelines allowing other proposals to be reviewed at the direction of the Cabinet Committee on Sustainable Development.

- **Threshold Inclusion** — Any project which exceeds established criteria would be subject to environmental assessment. For example, under the *Mine Development Assessment Act*, proposed mines that are capable of producing 10,000 tonnes of ore per year are automatically subject to review. Similarly, energy projects greater than 20 megawatts are automatically included under the *Utilities Commission Act*. In both cases, the minister has discretionary authority to require smaller projects to be reviewed, based on project size; the scale, magnitude and duration of potential impacts; project location; and public concern.

As a minimum, the proposed legislation will apply to projects that are currently subject to the Energy Project Review Process, the Mine Development Assessment Process and the Major Project Review Process. Projects at an advanced stage of review under one of the existing processes when the environmental assessment legislation is enacted should not necessarily be subject to the new process.

The proposed legislation will also apply to other projects with a similar level of potential environmental impacts. Projects subject to comprehensive environmental assessment in the proposed Canadian Environmental Assessment Act (Bill C-13) will be examined, and the same type and range of projects will be subject to the provincial legislation, where appropriate. The definition of "project" would be in-

cluded in the legislation. Projects that are not subject to the legislation would be reviewed through existing referral or operational planning processes.

Recommendation 1

A combination of category and threshold inclusion criteria should be used to determine which developments will be subject to environmental assessment. There should be provision in the legislation for the minister(s)* to require other projects to be subject to the environmental assessment process where it is considered to be in the public interest.

Public and Private Sector Projects

The Mine Development Assessment Process and the Major Project Review Process mainly apply to private sector projects, such as mines and pulp and paper mills. The Energy Project Review Process provides for the assessment of both private and public sector energy projects. Other types of publicly-sponsored projects, such as waste incinerators, dyking projects and major highways, are not normally subject to review under one of the three project review processes.

Recommendation 2

The environmental assessment process should be applied to both public and private sector projects that fall within the inclusion criteria established in the legislation.

Tailoring Project Review

Although environmental assessment requires that potential impacts be rigorously examined, experience in B.C. has shown that not every project needs to be assessed in the same way. The environmental assessment process must be rigorous enough to ensure that all components of a project and its associated impacts are considered. It must also be flexible enough to tailor the requirements to the nature of the project.

**Throughout this chapter, "minister(s)" will be used to indicate the minister or ministers who will be designated in the legislation as responsible for its administration. A discussion of this issue is presented in section 4.3 "Administrative Responsibility."*

The process must also be conducted in a timely manner that meets the needs of both the proponent and stakeholders. Two approaches are suggested for tailoring the environmental assessment process to specific projects.

- **Staged Review** — Environmental assessments are presently conducted in a series of stages or steps. The number of review stages required depends on the range and level of potential impacts and the degree of concern expressed by interested parties. Projects with manageable impacts and minimal public concern are approved at an early stage. Controversial and complex projects are subject to more comprehensive environmental assessment requirements. A proposed environmental assessment process is presented in Figure 1.

- **Class Assessment** — Some projects (e.g. small power generation projects, highway upgrading, landfills) are similar in nature, regardless of location. Their environmental effects are readily predictable and can be managed through proven mitigation methods. Class assessments have been introduced in other jurisdictions to streamline environmental assessments for such projects.

  In this approach, similar projects are grouped into categories. A number of "benchmark" projects would be examined in detail to produce a generic "class assessment" document for each category. Each document would outline typical planning and development requirements, environmental concerns and impact management strategies. The documents would be reviewed under the environmental assessment process. Afterward, proposals within an applicable class would normally be approved, subject to the class requirements. No further assessment would be required unless unusual circumstances were identified, in which case a site-specific assessment would be required.

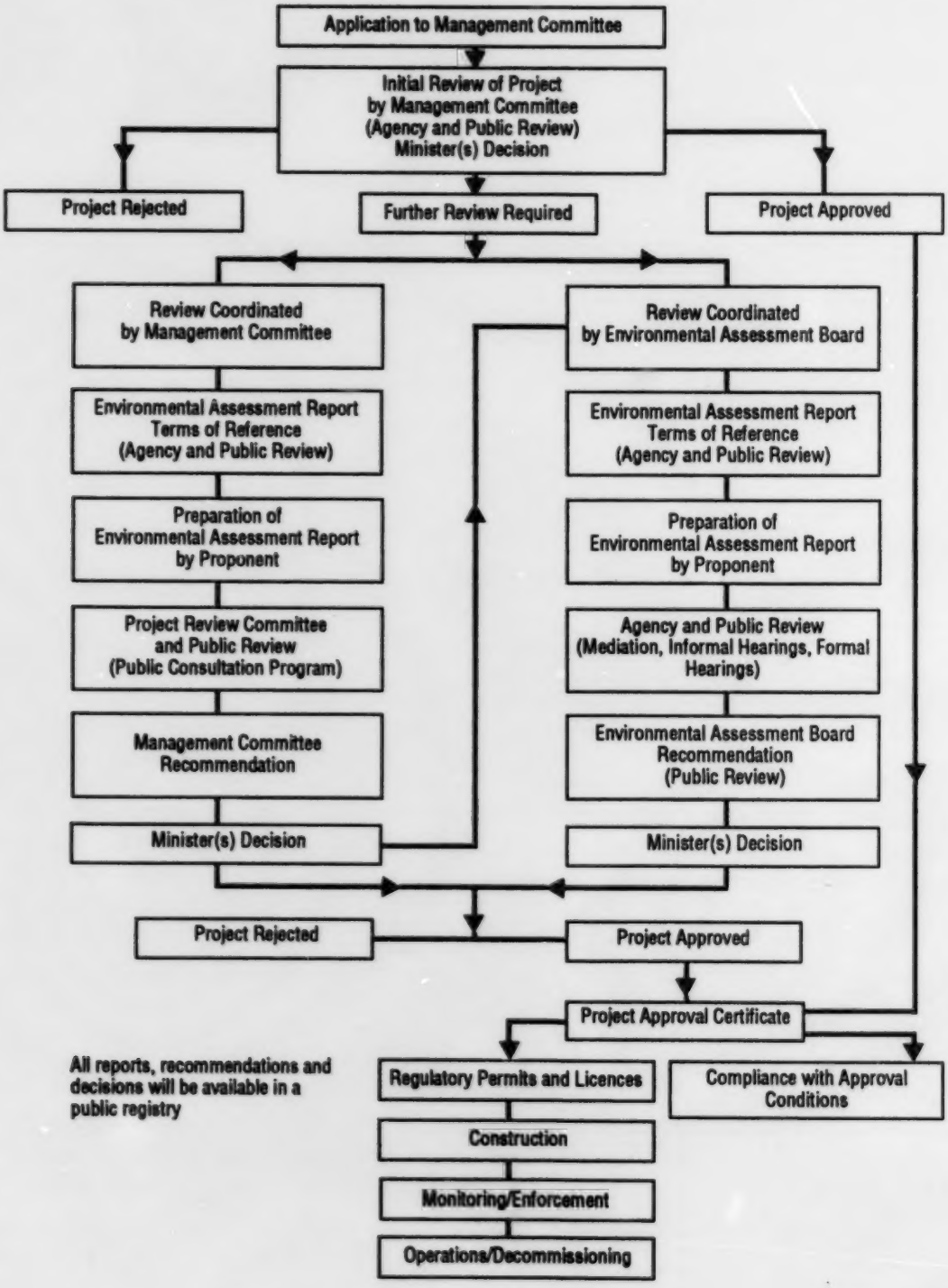
Recommendation 3

The legislation should establish a staged environmental assessment process.

Recommendation 4

Time frames should be set out in regulation to ensure discipline in the review process.

Proposed Environmental Assessment Process


Application to Management Committee
Initial Review of Project by Management Committee (Agency and Public Review) Minister(s) Decision
Project Rejected
Further Review Required
Project Approved
Review Coordinated by Management Committee
Review Coordinated by Environmental Assessment Board
Environmental Assessment Report Terms of Reference (Agency and Public Review)
Environmental Assessment Report Terms of Reference (Agency and Public Review)
Preparation of Environmental Assessment Report by Proponent
Preparation of Environmental Assessment Report by Proponent
Project Review Committee and Public Review (Public Consultation Program)
Agency and Public Review (Mediation, Informal Hearings, Formal Hearings)
Management Committee Recommendation
Environmental Assessment Board Recommendation (Public Review)
Minister(s) Decision
Minister(s) Decision
Project Rejected
Project Approved
Project Approval Certificate
All reports, recommendations and decisions will be available in a public registry
Regulatory Permits and Licences
Compliance with Approval Conditions
Construction
Monitoring/Enforcement
Operations/Decommissioning

Recommendation 5

The legislation should provide for the use of class assessment, and a regulation defining its application should be developed.

4.1 Scope of Environmental Assessment

For some time, environmental assessment has examined both on-site activity and related off-site infrastructure and activity at all stages of project planning and development (including design, construction, operations, and closure). Government is now having to deal with projects' indirect, cumulative and transboundary effects, risk management and contingency planning, resource sustainability, social and cultural equity, and community well-being — while still maintaining a stable investment climate. These issues are influencing the scope of environmental assessment in British Columbia.

Impact Assessment and Management

- **Potential Impacts** — There are three kinds of potential environmental impacts: direct, indirect and cumulative.
  - **Direct Impacts** — The provincial government expects proponents to identify and manage the direct environmental impacts of their projects.

    Direct biophysical impacts can occur on and off-site and are clearly attributable to the project (e.g. deterioration of water quality, noise, use of affected resources).

    Direct social and economic impacts normally occur off-site and may affect the local community. For example, the influx of the construction and operations workforce may overload community services (e.g. health, education and policing). The proponent's role in addressing such impacts is unclear.

    Less tangible social concerns, such as changes in community character and the effect on community stability, are not often considered in project reviews. In many cases, what the proponent identifies as a project-related impact and what the community "perceives" as an impact may be quite different. Social concerns may be based on a negative perception of the

proposed project and the perceived risk associated with its operation. Though community concerns and perceptions may be difficult to factor into the review process, they are nevertheless a reality. For some projects, "acceptability" will depend on the ability to recognize, acknowledge and satisfactorily address the community's response to the project.

- **Indirect Impacts** — Off-site impacts not directly attributable to project construction and operation may also occur. For example, the construction of a new road to a mine site may provide access to a previously inaccessible wilderness area. Improved access may lead to increased levels of hunting, angling and logging activity. Identifying and managing indirect impacts is a difficult task. In most cases, government addresses indirect impacts through measures such as additional enforcement staff to control hunting and fishing. The developer may also have a role in controlling use of access roads.

- **Cumulative Regional Impacts** — Site-specific impacts from a number of activities in a given area can have additive and interactive effects. Individual projects may have limited local impact on the environment. But when a number of projects occur in one area, the cumulative environmental impact may be much greater than predicted.

  As the province moves toward sustainability in resource management, it becomes more important to identify and manage cumulative impacts. This will be a difficult and complex task.

  Careful consideration must be given to determining the roles of government and the proponent in identifying and managing the cumulative regional impacts of projects. Government may be in a better position to judge the impact of a particular project proposal in the regional context. Through a combination of regional land use planning and environmental monitoring programs, reasonable limits on development can be set. This would enable environmental assessment to determine whether individual projects can be accommodated within the context of a broad range of land use and environmental protection objectives.

- **Impact Management** — The purpose of impact management is to prevent, reduce or offset the adverse impacts associated with the siting, construction, operation and closure of a project. Impact management has generally focused on identifying appropriate mitigation, compensation and contingency meas-

ures to address the direct on-site and off-site impacts of a project. Despite these measures, residual impacts will occur. The use of full cost accounting will help to define these impacts and may help to evaluate their acceptability.

Mitigation measures are actions taken on or off-site to prevent or minimize identified environmental impacts. Where mitigation is not feasible, environmental impacts may be offset through other measures, such as compensation (in cash or in kind). For example, increasing the productive capacity of other habitats may be considered to be compensation for habitat loss at the development site. The government and private industry have not generally considered cash payment to be acceptable compensation.

Monitoring and contingency measures are designed to aid in the detection of, and timely response to, unforeseen impacts. Monitoring programs should be established to ensure that the project is operating properly, that mitigation measures are effective, and that any unanticipated problems are identified and addressed.

Recommendation 6

Consistent with current practice, the legislation should state that it is the proponent's responsibility to identify and manage all direct environmental impacts associated with a project.

Recommendation 7

Indirect and cumulative impacts should be included in the environmental assessment process where they are considered significant by the management committee, the Environmental Assessment Board or the minister(s).

Recommendation 8

The project approval certificate should specify impact management requirements and conditions. There should be clear authority and mechanisms in government regulatory bodies to ensure that these conditions are met. Where appropriate, the public should be involved in monitoring and follow-up activities.

Recommendation 9

The government is reviewing policy on mitigation and compensation and their role in environmental assessment. Advice on how to deal with important policy issues, such as indirect impacts, socio-economic impacts, residual impacts and full cost accounting, would be appreciated.

Compliance Monitoring and Operational Management

Compliance monitoring is required to ensure that a project is in accordance with the terms and conditions of the project approval certificate. It is largely the proponent's responsibility to demonstrate that the project is meeting these requirements. The minister responsible can work with the proponent to ensure compliance and, if necessary, withdraw the project approval certificate for breach of its conditions.

Predicting potential impacts and judging the effectiveness of proposed impact management measures is an imprecise science. These limitations can frustrate the desire for certainty. These factors are require more elaborate project follow-up programs and safeguards to monitor actual impact. The environmental assessment process has to enable monitoring during construction and operation, supervision of construction, contingency measures and performance bonding.

Recommendation 10

The legislation should specify that the proponent's responsibility for monitoring compliance be included in the project approval certificate and should enable the minister(s) to withdraw the certificate for breach of its conditions.

Recommendation 11

Follow-up programs and safeguards should be considered as part of the environmental assessment process and incorporated in the project approval certificate.

Project Justification

The Energy Project Review Process requires that a project be justified to assess its consistency with provincial energy policy. The scope has generally focused on

markets, financial feasibility, procurement opportunities for British Columbia businesses, and economic benefit/cost analysis.

Broader project justification questions — comparing resource use options on the basis of demand, need, and overall benefits and costs — are being raised more frequently in project reviews. Decisions require comparisons of resource extraction values and social values (for example, timber or mineral values versus aesthetic or wilderness values). Social values, such as the desire to protect wilderness or old-growth forests, are difficult to measure objectively or in dollar terms. Therefore, an evaluation based only on economic criteria is often not acceptable.

Criteria addressing such matters as compatibility with land use goals and the effectiveness of impact management measures are required to guide project justification. These criteria may differ between a project that is privately sponsored and one that is totally or partially funded by government. For example, analysis of public sector projects would put more emphasis on need and alternative resource uses to determine if the expenditure of tax payers dollars is in the public interest. Determination of need, distribution of costs and benefits, and "the public interest" are inherently "political" in nature, which can make project justification controversial.

Recommendation 12

Public sector projects should be subject to detailed justification analysis, including the examination of alternatives, when appropriate.

Recommendation 13

For private sector projects, justification should be limited to projects where the proponent is seeking public funding assistance or where significant Crown-owned resources are involved.

4.3 Administration of the Environmental Assessment Process

Administrative Responsibility

Effective administration is essential to a fair and efficient environmental assessment process. The administration must serve four major functions: serving as a point of contact for project proponents; coordinating government, proponent and public roles and responsibilities; synthesizing the results of the environmental assessment into an integrated position; and recommending a course of action for consideration of the minister(s) responsible for project approval.

A major strength of the existing project review processes is that provincial and federal agencies responsible for environmental, economic and social programs help administer the processes by participating on management committees. As well, the Cabinet Committee on Sustainable Development involvement in determining policy and adjudicating contentious projects has helped integrate provincial interests.

In addition, project review committees comprising all affected agencies and representatives of local government have been established to help coordinate the project review and ensure that all relevant issues are presented for the management committee's consideration.

There are three options for assigning lead administrative responsibility for the environmental assessment process.

- **The Ministry of Environment, Lands and Parks** — Administration of environmental assessment legislation in Canada is often assigned to the ministry with overall responsibility for the environment. In British Columbia, the Ministry of Environment, Lands and Parks has the mandate for the protection and enhancement of the environment.

  Under this option, administration of the environmental assessment process could be consistently and efficiently applied to all project types throughout the province. This option would also enable those ministries responsible for resource development to better represent the needs of their client groups in project reviews (e.g. proponents of mine and energy projects).

The Ministry of Environment, Lands and Parks has regulatory responsibilities and clients groups, and serves as an advocate for these groups.

- **Joint Administration by the Provincial Ministry Responsible for Sector Development (e.g. Ministry of Energy, Mines and Petroleum Resources, Ministry of Economic Development, Small Business and Trade) and the Ministry of Environment, Lands and Parks** — This option would resemble the existing approach, in which the Ministry of Environment, Lands and Parks has joint responsibility with other agencies for administration of the project review processes. The Minister of Environment, Lands and Parks also shares responsibility for final decisions. Under this option, individual ministries would apply the requirements of the legislation to projects within their sector. Joint administration of the process with the Ministry of Environment, Lands and Parks would help to provide a balanced approach to addressing environmental and economic issues.

  This option recognizes that lead ministries have developed a rapport with their client group and an understanding of its needs. The major advantage of this approach is that proponents could continue to deal directly with the ministry responsible for approvals and licensing in that sector (e.g. energy or mines).

  Having several ministries responsible for process administration could make it more difficult to ensure consistent application of the environmental assessment process. No matter how detailed the legislation and regulations will be, discretionary decisions will be required. If these decisions are made by different ministries, uneven process administration may result. The perception of agency bias could also remain. Liaison with federal and local governments and aboriginal groups could also be impeded. Joint administration by the Ministry of Environment, Lands and Parks could help offset these difficulties.

- **A Neutral Agency** — A neutral government agency could be set up to administer the legislation and to chair the management committee. The agency would function as an advisor to government, likely reporting to the Cabinet Committee of Sustainable Development. The proposed Environmental Assessment Board could be fully integrated with the agency or could operate at arm's length. A neutral agency could be linked to, or integrated with, land use planning and other related activities.

Removal of the perception of bias is the major advantage of this option. To ensure accountability, final decisions would be made by the minister(s) or the Cabinet, either directly or on appeal.

Establishing a neutral agency may be more, as it would require a new bureaucracy. It would also be more difficult to maintain linkages with the policy, program and enforcement activities of the ministries that facilitate integrated project review and management.

Recommendation 14

To ensure that the process is administered in a neutral, unbiased and effective manner, a management committee of senior officials of lead agencies (e.g. Environment, Lands and Parks; Energy, Mines and Petroleum Resources; Economic Development, Small Business and Trade and Aboriginal Affairs) should guide the review process and develop recommendations to the minister(s).

Recommendation 15

Responsibility for chairing and directing the environmental assessment process should be assigned to one of the following:

- **the Ministry of Environment, Lands and Parks, or**
- **the Ministry of Environment, Lands and Parks and a lead agency, or**
- **a neutral agency reporting to the Cabinet Committee on Sustainable Development**

Prior to developing a recommendation on this issue, public comment on these options and the selection of the responsible minister(s) is required.

Recommendation 16

To ensure that a full range of views is reflected in the review of individual projects, a project review committee should be formed at the outset of each review.

Cost Recovery

There is considerable latitude in the application of cost recovery to the environmental assessment process. Although there is provision for charging fees for review of a mine proposal, project proponents have not been required to pay the costs associated with major project reviews. However, the provincial government routinely recovers some of the costs for other aspects of project evaluation. For example, fees are collected for processing applications for water licences and waste management permits. In addition, a panel or commission, established under the *Utilities Commission Act* or *Mine Development Assessment Act*, is able to recover costs of conducting a public inquiry into an energy or mine project.

The ability to recover costs for environmental assessment of major projects is consistent with the philosophy of user pay. At the same time, funds generated could be ear-marked to provide government with additional resources to support the environmental assessment process. Project proponents have identified the need for additional staff resources to improve government efficiency and timeliness. Fees for reviews could also serve to discourage speculative proposals.

There is an argument that the proponent is already supporting government services through various taxes and royalties. Further recovery of assessment costs could be considered by some sectors to be unfair. Consideration should be given to when cost-recovery should be applied and under what conditions fees could be refunded.

Recommendation 17

Government should develop a formula to recover costs for project reviews, that is linked the extent of the assessment process. Criteria for cost recovery should be established by draft regulation and circulated for detailed comment prior to being implemented.

4.4 Decision-Making

Approval Decision

The principles of accountability and fairness require that the environmental assessment decisions be based on clear, explicit criteria and that the rationale be docu-

mented and made available to all participants. If the project is judged acceptable, the decision may be documented in the form of an approval-in-principle letter or a more formal project approval certificate from the responsible minister(s). Conditions of the approval, and the responsibilities of the proponent, government and other parties in meeting them, should be defined in the approval document.

The project approval certificate must be valid for sufficient time for the proponent to finance the project, finalize the design and initiate construction. Under existing project review processes, the approval decision remains in good standing for five years. If there is no significant progress in implementing the project during that period, the approval lapses. Five years may be too long a period, given that social and environmental conditions and best available technology may change substantially. On the other hand, five years may be needed to allow the project to be launched at the right stage of the business cycle.

Recommendation 18

The approval document should be in the form of a project approval certificate. The certificate should provide clear direction on the final stage of project approval (permits and licensing) and implementation. The project approval certificate should have specific conditions attached to guide the proponent.

Recommendation 19

The project approval certificate should remain in good standing for at least three and no more than five years.

Decision-Making Responsibility

The proposed legislation must assign responsibility for decisions related to process administration, and for the final decision on a project's acceptability.

Most jurisdictions involve government ministries, agencies and elected officials in different aspects of administering environmental assessment legislation. For example, most administrative decisions in the British Columbia project review processes are made by steering committees of government officials. These decisions include identifying the level of required review and public consultation. Only specific ministers can refer energy projects to the B.C. Utilities Commission for a

public hearing or appoint ad hoc panels to hold public hearings on mine projects and other industrial projects.

Given that project approval decisions often involve policy choices and trade-offs among competing interests, they should be made by those elected by, and accountable to, the public. In British Columbia, steering committees, ad hoc panels and the Utilities Commission do not currently make decisions on project approval. Instead, they make recommendations to the minister(s) or Cabinet, which makes the final decision.

Recommendation 20

With the support of Cabinet, the minister(s) designated by Cabinet as having the lead responsibility for administering the environmental assessment process should issue the project approval certificate for all projects and should determine when independent public review is required. Administrative decisions should be made with the advice of an inter-ministry management committee.

Appeals

Clear, fair and timely provisions for appeals should be incorporated into the legislation. Appeals of management committee decisions that affect the review process may be made to the minister(s). Such appeals would most likely stem from allegations of unfair or inappropriate process (e.g. the committee's decision did not take relevant information into account or was not supported by the technical evidence submitted).

Decisions on project acceptability made by the minister are not normally subject to appeal, as such decisions are made with the full support of Cabinet.

The right to appeal regulatory permits and licences issued after project approval should remain. In the case of projects that have undergone an independent public review, an appeal provision may be unnecessary given the extensive public consultation involved.

Recommendation 21

Administrative decisions made by government officials should be subject to appeal to the minister(s).

Recommendation 22

A decision by Cabinet to issue a project approval certificate should be final. Further, if an independent public review is conducted, regulatory permits and licences issued in compliance with the project approval certificate should not be subject to appeal.

Recommendation 23

Normal appeal procedures should apply to all decisions on permits and licences where approval has not been preceded by independent public review.

4.5 Partnerships

Partnerships with Other Jurisdictions

The provincial environmental assessment process should include a provision for inter-jurisdictional cooperation to reduce duplication of effort and to address transboundary environmental impacts.

Provincial and federal agencies are working to harmonize existing environmental assessment processes to reduce inefficiencies and delays. Joint federal/provincial panels have also been established to hold public hearings on specific projects.

Through the Canadian Council of Ministers of the Environment, the province is actively involved in efforts to harmonize the proposed Canadian Environmental Assessment Act with the provincial environmental assessment system. B.C. has requested that the federal legislation recognize the equality of provincial processes and that it provide a mechanism to determine federal and provincial responsibilities for specific projects.

British Columbia recently supported ratification of the United Nations "Convention on Environmental Impact Assessment in a Transboundary Context." Among its general provisions is a commitment to take effective measures to prevent, reduce and control adverse transboundary impacts from projects.

Transboundary issues that may be subject to an environmental assessment include long-range transport of air pollutants, water quality and quantity and global warming.

Recommendation 24

The environmental assessment process should enable the province to work cooperatively with the federal government, neighbouring jurisdictions (provinces, states and territories) and local government.

Recommendation 25

Provision should also be made to enter into interjurisdictional agreements on research, monitoring and management activities.

Recommendation 26

The proposed legislation should enable the province to enter into cooperative or joint technical and/or public hearings with the federal government. The province will continue to seek equivalency agreements with the federal government to reduce duplication of environmental assessment requirements.

Recommendation 27

The proposed legislation should enable local government to participate on project committees. The legislation should also provide opportunities for devolving to local governments environmental assessment responsibilities for projects largely within their areas of jurisdiction.

Partnerships with First Nations

The environmental assessment process must take into account the impacts on aboriginal sustenance and cultural activities, and socio-economic implications for aboriginal communities. This requires that First Nations participate in project review. The legislation should also enable the process to be coordinated with aboriginal environmental assessment processes that may be developed as a result of treaty and self government initiatives.

Recommendation 28

Impacts on aboriginal sustenance and cultural activities, and socio-economic implications for aboriginal communities, should be included in all environmental assessments.

Recommendation 29

First Nations should be invited to participate as members of project review committees.

Recommendation 30

The legislation should enable the process to be coordinated with aboriginal environmental assessment processes that may be developed as treaty and self government initiatives evolve.

4.6 Public Involvement

Public involvement is essential to the environmental assessment process. To involve the public in a meaningful way, the following elements should be incorporated into the environmental assessment process.

Accessible Information

The legislation should provide for easy public access to all information, reports and decision documents. Procedures for access to information must be consistent with

emerging provincial freedom of information and protection of privacy requirements.

A provision could also be made for the establishment of a project registry, which could provide a single source of information on all projects subject to the environmental assessment process. The registry would make available a project description, government review comments, public involvement opportunities, decisions reached, and other information.

Recommendation 31

The legislation should outline public notification requirements, procedures for the release of documents, and public consultation opportunities.

Recommendation 32

A project registry should be established to assist the public in participating in the environmental assessment process.

Opportunities for Public Input

The environmental assessment process must provide opportunities for public input at all stages of review. While the nature and extent of public input will likely vary from project to project, the principle of meaningful involvement must be assured by the legislation. This must be balanced with the proponents need for a planned and timely process.

A structured procedure for identifying the key issues is important to focus the environmental assessment. Other jurisdictions involve the public in identifying issues at the beginning of the environmental assessment process. In B.C.'s existing review processes, proponents work with government agencies to develop project-specific terms of reference. Although the public is currently invited to express concerns, it is not formally involved in determining which issues should be addressed.

Recommendation 33

The legislation should provide for the involvement of the public in issue identification and throughout the review process.

Recommendation 34

When an independent public review is required, draft terms of reference outlining the issues and the scope of the review should be circulated for public input.

Recommendation 35

At the conclusion of each stage of the review process (see Figure 1), there should be a decision on what level of public involvement is required at the next stage.

Recommendation 36

Recommendations of the management committee and the assessment board should be made public before the minister(s) makes a decision on project acceptability.

Independent Public Review

For the environmental assessment process to be credible and accountable, the legislation should provide for the independent review of projects, when warranted. For the majority of projects, it is anticipated that the process will produce an adequate assessment without the need for independent review.

Some projects, however, will be very controversial and/or have potential for major environmental impacts. For these projects, an independent process may be needed to verify and supplement existing information or to provide a forum for public discussion. As well, independent reviews may be required to coordinate the provincial process with the requirements of other jurisdictions, such as the federal government.

- **Structuring an Independent Public Review Body** — Under the federal Environmental Assessment Review Process (EARP), independent public review of projects is conducted by independent ad hoc panels appointed by the federal Minister of the Environment. The federal government requires that the panel appointed for each hearing comprise knowledgeable people. This approach enables the panel to be tailored to the project under review.

In the province's experience, however, it is difficult to ensure consistency from one ad hoc panel to the next. Although the ad hoc panels have provided a good public service, independent panel reviews have been more difficult and costly to administer than the standing Utilities Commission.

Permanent boards or commissions are being created or recommended in most Canadian jurisdictions. A permanent board encourages efficiency and clear and consistent review procedures. It can also develop expertise in conducting public hearings and mediation activities. Membership can be augmented by technical experts for specific hearings.

Recommendation 37

A permanent board (the Environmental Assessment Board) should be established to conduct independent public reviews and to make recommendations to the minister(s). The role of the board in relation to the Commission on Resources and Environment and the B.C. Utilities Commission will have to be clarified.

Recommendation 38

The appointment, mandate and function of the board should be set out in legislation and regulation.

- **Public Hearings**—Public hearings are a standard provision in most environmental assessment processes. An opportunity for an independent body to receive comments and advice in an open public forum is important to the integrity of the process. Criteria are needed to specify when a proposal should be referred to an independent body for a public hearing. Circumstances that could prompt a public hearing include serious potential adverse impacts, major public concern, or the need to coordinate requirements with other jurisdictions, such as the federal government.

  There are two general models for public hearings. Quasi-judicial hearings make extensive use of rules of evidence, swearing in and cross examination of witnesses, and the use of lawyers. Informal procedures use a less judicial style of operation.

  There is a growing interest in providing more informal public hearings. The federal process has traditionally favoured non-adversarial procedures,

generally excluding lawyers, to promote an open atmosphere and encourage the participation of all interested parties. This is consistent with an approach that includes provision for negotiation and mediation to resolve land use and environmental conflicts.

Recommendation 39

The legislation should provide for an informal public hearing process.

Recommendation 40

The minister(s) should have responsibility to call for an independent public review and to consider the advice of the public and the proponent in reaching this decision.

Consensus-Based Approaches

Consensus-based approaches should be applied throughout the environmental assessment process. At virtually every stage, there are issues that can best be resolved through the cooperation and collaboration. Such measure work best when they are managed with minimmum formality and direction.

Negotiation is a voluntary, collaborative process in which parties try to reach agreement through direct discussion. This technique is routinely used in all three existing project review processes, mainly between review agencies and proponents.

Mediation is a process of negotiation assisted by an impartial third party who has no power to impose a solution. For mediation to be effective, issues must be amenable to a negotiated resolution and involved interest groups must be willing to seek a mutually acceptable solution.

Mediation has not been widely used in British Columbia to resolve environmental or land use conflicts. However, a provision for mediation has been included in the Mine Development Assessment Act and the approach has been used informally for some mine developments. The Major Project Review Process Guidelines also allow Cabinet to appoint a mediator/facilitator to assist the affected parties in negotiating a mutually acceptable solution.

Recommendation 41

Provisions for consensus-based approaches throughout the environmental assessment process should be included in the legislation.

Recommendation 42

The minister(s) or the chair of the assessment board should be authorized to appoint a mediator to help involved parties resolve issues.

Participant Assistance

A key issue related to public involvement is the extent to which assistance should be provided to community, aboriginal and public interest groups to enable them to participate effectively in the environmental assessment process. Well-prepared participants can provide a broader range of ideas and information on which decisions can be based, including perspectives that would not otherwise be available.

The federal government provides funding for participants in public hearings under the Environmental Assessment and Review Process. The province does not now make financial resources directly available to those who wish to independently assess the implications of proposed projects. However, independent technical consultants have been retained by review panels to assist participants involved in public hearings.

Participant assistance should encourage issue resolution and not entrench adversarial positions. If participant assistance is to be provided, criteria will be needed to assess requests. The criteria should specify the aspects of assessment for which assistance is available, when it is available (before or after assessment), and who is eligible. For example, one criterion might be that participants with similar concerns be jointly funded to eliminate duplication and minimize costs.

The provincial and federal governments should avoid duplicating assistance. Where appropriate, they may wish to share the costs of participant assistance.

Recommendation 43

Involved groups that do not have resources to effectively participate in mediation or public hearings should receive assistance. The principal form of participant assistance would be to provide independent technical expertise.

Recommendation 44

A person or body who is independent of the environmental assessment process should be responsible for evaluating applications for participant assistance.

Recommendation 45

The government is formulating a policy on direct participant funding which will guide its application to environmental assessment. Advice on how to deal with this important policy issue would be appreciated.

5
NEXT STEPS

To refine these recommendations for improved environmental assessment and to consider alternate approaches, the Ministry of Environment, Lands and Parks needs your input.

A public consultation process is being implemented to provide British Columbians with an opportunity to comment on the development of a strengthened environmental assessment process.

As a first step, you are encouraged to provide us with written comments, using the response form included with this paper.

If you would like further information on the consultation process, or if you have questions regarding Reforming Environmental Assessment in British Columbia, please call the Legislation Consultation Project toll free at 1-800-665-7120, or in Victoria at 387-4591.

APPENDIX

Existing Project Review Processes

The Utilities Commission Act: Part II of the Act authorizes the Energy Project Review Process (EPRP). The EPRP is administered by the Ministry of Energy, Mines and Petroleum Resources. The Minister of Energy, Mines and Petroleum Resources, with the concurrence of the Minister of Environment, Lands and Parks, approves applications for certification of "regulated projects," defined according to the amount of energy generated or involved in transmission. The two ministers decide whether to refer the application to the B.C. Utilities Commission (BCUC) for a public hearing, or to exempt the project from public review and approve or reject the project. There is no appeal of a decision by Cabinet regarding an Energy Project Certificate that results from a recommendation of a commission hearing.

Mine Development Assessment Act: This Act formalizes the Mine Development Assessment Process by which "reviewable" metal and coal mine projects receive certification. Under the Act, the assessment process closely parallels the Energy Project Review Process. The assessment process is administered jointly by the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment, Lands and Parks. Decisions regarding project disposition are shared jointly by the two ministers. Both ministers determine the need for formal public review and the appointment of independent assessment panels. There is no standing commission similar to the B.C. Utilities Commission for public hearings.

Environment and Land Use Act: This Act supports the Major Project Review Process to assess the construction or expansion of major industrial facilities. Under a non-legislated working policy of the Cabinet Committee on Sustainable Development, the process is administered jointly by the Ministry of Environment, Lands and Parks and the Ministry of Economic Development, Small Business and Trade. The Cabinet committee makes decisions on project disposition. The Cabinet committee may also determine the need for formal public review and appoint independent panels to conduct public inquiries. There is no standing commission similar to the B.C. Utilities Commission for public hearings.

Environment Management Act: Section 3 of the Act enables the Minister of Environment, Lands and Parks to order an environmental assessment of any proposal that would have a detrimental impact on the environment. Section 3 applies only in cases where the impacts of major projects cannot be adequately covered through an existing process. Section 7 of the Act enables the minister to order an inquiry with respect to the environment. Recent provincial/federal reviews held under the authority of the Act include the Sherwood Pacific Ferrochromium Plant in Port Hardy and the Celgar Pulp Mill Expansion in Castlegar.

APPENDIX

WE WANT TO HEAR FROM YOU

Reforming Environmental Assessment in British Columbia, A Legislation Discussion Paper proposes to strengthen environmental assessment through the development of a single legislated process. The discussion paper provides an overview of the proposals being considered. It also is intended to elicit input to help shape a comprehensive, fair and open process to determine the acceptability of projects.

A consultation process is being undertaken to provide opportunities for the public to comment on the proposals contained in this paper. As a first step, you are invited to complete the following questionnaire.

If you would like further information on the public consultation process, or if you have questions regarding *Reforming Environmental Assessment in British Columbia*, please call the Legislation Consultation Project at **1-800-665-7120** or **387-4591** in Victoria.

In completing the following response form:

- If your comments relate to a particular recommendation, please identify it by number in the space provided.
- Include your mailing address. This will enable the ministry to keep you informed about future steps in the consultation process.

Please ensure that your response form and/or submission is faxed or mailed to the ministry by May 15, 1992.

Submissions can be sent to:
Ministry of Environment, Lands and Parks
Ministry Legislation Consultation Project
First Floor, 810 Blanshard
Victoria, B.C.
V8V 1X5
or faxed to 356-6464

READER RESPONSE FORM

Name (optional): _____ Title: _____

Organization: _____

Address: _____

Phone: (Home) _____ (Business) _____

Would you like to be included on the ministry's mailing list? yes ☐ no ☐

Application of the Environmental Assessment Process

Recommendation

A combination of category and threshold inclusion criteria should be used to determine those projects subject to the environmental assessment process.

Agree ☐ Disagree ☐

Comments _____

_____

_____

_____

Recommendation

The environmental assessment process should apply to both public and private sector projects that fall within the inclusion criteria set in the legislation.

Agree ☐ Disagree ☐

Comments _____

_____

_____

_____

Recommendation

All project categories currently reviewed under one of the three project review processes should be included in the proposed act.

Agree ☐ Disagree ☐

Comments _____

_____

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Recommendation

Legislation should provide for a staged review process. Time frames should be set out in regulation to ensure discipline through the review process.

Agree ☐ Disagree ☐

Comments _____

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Scope of the Environmental Assessment

Recommendation

Consistent with current practice, the legislation should state that is the proponent's responsibility to identify and manage all direct environmental impacts associated with a project.

Agree ☐ Disagree ☐

Comments _____

_____

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Recommendation

Indirect and cumulative regional impacts should be included in the environmental assessment process where they are considered significant by the management committee or the minister (s).

Agree ☐ Disagree ☐

Comments _____

_____

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_____

Administration of the Environmental Assessment Process

Recommendation

Responsibility for administration of the environmental assessment process will be assigned to one or more provincial ministers. Advice is sought on which minister(s) should be involved.

Comments _____

_____

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_____

Recommendation

An inter-ministry management committee should guide the overall review process and develop recommendations for the minister(s). A project review committee should be formed at the outset of each individual project review.

Agree ☐ Disagree ☐

Comments _____

_____

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Recommendation

Government should develop a formula to enable cost-recovery for project reviews. The formula should reflect the scope of the environmental assessment process.

Agree ☐ Disagree ☐

Comments _____

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_____

Decision-Making Responsibility

Recommendation

Approval should take the form of a project approval certificate.

Agree ☐ Disagree ☐

Comments _____

_____

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_____

Recommendation

The minister(s), with the support of Cabinet, should issue an approval certificate for all projects and should determine when independent public review is required. Administrative decisions should be made with the advice of an inter-ministry management committee.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

A decision by Cabinet to issue a project approval certificate should be final. If an independent public review is conducted, regulatory permits and licences issued in compliance with the project approval certificate should not be subject to appeal. Administrative decisions made by government officials should be subject to appeal to the minister(s).

Agree ☐ Disagree ☐

Comments _____

_____

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_____

Partnerships

Recommendation

The environmental assessment process should enable the province to work cooperatively with the federal government, neighbouring jurisdictions (provinces, states and territories), local governments, including regional and municipal governments and First Nations.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

The legislation should enable the province to enter into interjurisdictional agreements, for cooperative or joint technical and/or public hearings with the federal government.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

Potential impacts on aboriginal sustenance and cultural activities and socio-economic implications for aboriginal communities should be included in all environmental assessments.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

First Nations should be given an opportunity to participate as members of project review committees.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

The legislation should enable the provincial process to be coordinated with environmental assessment processes that may be developed as treaty and self government initiatives evolve.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

The legislation should also provide opportunities for devolving responsibility to local for the environmental assessment of projects that are largely within their jurisdiction.

Agree ☐ Disagree ☐

Comments _____

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Public Involvement

Recommendation

Legislation should outline procedures for public notification, the release of documents and public consultation through the review process.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

A permanent environmental assessment board should be established to hold independent public reviews of projects. An informal public hearing process is preferred. The Board would make recommendations to the minister(s).

Agree ☐ Disagree ☐

Comments _____

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Recommendation

Consensus-based approaches to dispute resolution mechanisms should be formally included in the legislation.

Agree ☐ Disagree ☐

Comments _____

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Recommendation

Assistance in the form of access to technical expertise should be provided as part of the environmental assessment process.

Agree ☐ Disagree ☐

Comments _____

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Additional Comments

Recommendation Number: _____

Comments: (attach additional sheets if necessary) _____

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Recommendation Number: _____

Comments: (attach additional sheets if necessary) _____

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How can the Ministry of Environment, Lands and Parks best involve you and your community in the consultation process (i.e. workshops, selective consultations, public advisory groups, stakeholder committees, etc.)?

Thank you for taking the time to comment on this initiative.